

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 131

BY TRANSPORTATION AND DEFENSE COMMITTEE

AN ACT

RELATING TO IDAHO COMMEMORATIVE MEDALLIONS; TO PROVIDE LEGISLATIVE INTENT; AMENDING SECTION 40-702, IDAHO CODE, TO PROVIDE THAT THE STATE HIGHWAY ACCOUNT MAY CONSIST OF THE PROCEEDS OF THE SALE OF TRANSPORTATION IDAHO COMMEMORATIVE MEDALLIONS; AMENDING SECTION 63-3022, IDAHO CODE, TO DEDUCT ANY AMOUNTS INCLUDED IN GROSS INCOME; AMENDING SECTION 63-3622PP, IDAHO CODE, TO PROVIDE THAT ALL MEDALLIONS SOLD BY THE STATE TREASURER ARE EXEMPT FROM THE SALES AND USE TAX; AMENDING SECTION 67-1223, IDAHO CODE, TO PROVIDE FOR A GOLD AND SILVER COMMEMORATIVE MEDALLION TO BE SOLD AND TO PROVIDE FOR WHAT PROCEEDS FROM THE SALE OF MEDALLIONS SHALL BE USED; AND DECLARING AN EMERGENCY, PROVIDING RETROACTIVE APPLICATION AND PROVIDING EFFECTIVE DATES.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. LEGISLATIVE INTENT. It is the intent of the Legislature to provide a voluntary source of funding for Idahoans to assist with highway construction, maintenance and other needed transportation projects.

SECTION 2. That Section 40-702, Idaho Code, be, and the same is hereby amended to read as follows:

40-702. STATE HIGHWAY ACCOUNT – ESTABLISHMENT. For the purpose of carrying out the provisions of this title, there is established in the dedicated fund of the state treasury an account to be known as the state highway account, which account shall include:

- (1) All moneys received by the state treasurer for deposit to the state highway account.
- (2) All fines, penalties and forfeitures incurred and collected for violations of the provisions of this title, except as otherwise provided.
- (3) All donations to the state from any source for the construction and improvement of highways.
- (4) All moneys received from local boards under joint contracts for the construction of state highways.
- (5) All federal surface transportation funds received from the United States government, including, but not limited to, funds received pursuant to chapter 1 of title 23, United States Code, for the national highway systems program, the surface transportation program, the highway bridge program, the minimum guarantee program, the federal lands highways program and other similar programs under successor laws.
- (6) Other moneys which may be provided by law for the construction and improvement of state highways.

(7) Interest earned on the investment of idle moneys in the state highway account shall be paid to the state highway account.

(8) Moneys received from the sale of the transportation Idaho commemorative medallion pursuant to section 67-1223, Idaho Code.

SECTION 3. That Section 63-3022, Idaho Code, be, and the same is hereby amended to read as follows:

63-3022. ADJUSTMENTS TO TAXABLE INCOME. The additions and subtractions set forth in this section, and in sections 63-3022A through 63-3022Q, Idaho Code, are to be applied to the extent allowed in computing Idaho taxable income:

(a) Add any state and local taxes, as defined in section 164 of the Internal Revenue Code and, measured by net income, paid or accrued during the taxable year adjusted for state or local tax refunds used in arriving at taxable income.

(b) Add the net operating loss deduction used in arriving at taxable income.

(c) (1) A net operating loss for any taxable year commencing on and after January 1, 2000, shall be a net operating loss carryback not to exceed a total of one hundred thousand dollars (\$100,000) to the two (2) immediately preceding taxable years. Any portion of the net operating loss not subtracted in the two (2) preceding years may be subtracted in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The sum of the deductions may not exceed the amount of the net operating loss deduction incurred. At the election of the taxpayer, the two (2) year carryback may be foregone and the loss subtracted from income received in taxable years arising in the next twenty (20) years succeeding the taxable year in which the loss arises in order until exhausted. The election shall be made as under section 172(b)(3) of the Internal Revenue Code. An election under this subsection must be in the manner prescribed in the rules of the state tax commission and once made is irrevocable for the year in which it is made. The term "income" as used in this subsection (c) means Idaho taxable income as defined in this chapter as modified by section 63-3021(b)(2), (3) and (4), Idaho Code.

(2) Net operating losses incurred by a corporation during a year in which such corporation did not transact business in Idaho or was not included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, may not be subtracted. However, if at least one (1) corporation within a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred, then the net operating loss may be subtracted. Net operating losses incurred by a person, other than a corporation, in activities not taxable by Idaho may not be subtracted.

(d) In the case of a corporation, add the amount deducted under the provisions of sections 243(a) and (c), 244, 245 and 246A of the Internal Revenue Code (relating to dividends received by corporations) as limited by section 246(b)(1) of said code.

(e) In the case of a corporation, subtract an amount determined under section 78 of the Internal Revenue Code to be taxable as dividends.

(f) Subtract the amount of any income received or accrued during the taxable year which is exempt from taxation by this state, under the provisions of any other law of this state or a law of the United States, if not previously subtracted in arriving at taxable income.

(g) For the purpose of determining the Idaho taxable income of the beneficiary of a trust or of an estate:

(1) Distributable net income as defined for federal tax purposes shall be corrected for the other adjustments required by this section.

(2) Net operating losses attributable to a beneficiary of a trust or estate under section 642 of the Internal Revenue Code shall be a deduction for the beneficiary to the extent that income from the trust or estate would be attributable to this state under the provisions of this chapter.

(h) In the case of an individual who is on active duty as a full-time officer, enlistee or draftee, with the armed forces of the United States, which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or more, deduct compensation paid by the armed forces of the United States for services performed outside this state. The deduction is allowed only to the extent such income is included in taxable income.

(i) In the case of a corporation, including any corporation included in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, add any capital loss deducted which loss was incurred during any year in which such corporation did not transact business in Idaho. However, do not add any capital loss deducted if a corporation, including any corporation in a group of corporations combined under subsection (t) of section 63-3027, Idaho Code, was transacting business in Idaho during the taxable year in which the loss was incurred. In the case of persons, other than corporations, add any capital loss deducted which was incurred in activities not taxable by Idaho at the time such loss was incurred. In computing the income taxable to an S corporation or partnership under this section, deduction shall not be allowed for a carryover or carryback of a net operating loss provided for in subsection (c) of this section or a capital loss provided for in section 1212 of the Internal Revenue Code.

(j) In the case of an individual, there shall be allowed as a deduction from gross income either (1) or (2) at the option of the taxpayer:

(1) The standard deduction as defined in section 63, Internal Revenue Code.

(2) Itemized deductions as defined in section 63 of the Internal Revenue Code except state or local taxes measured by net income and general sales taxes as either is defined in section 164 of the Internal Revenue Code.

(k) Add the taxable amount of any lump sum distribution excluded from gross income for federal income tax purposes under the ten (10) year averaging method. The taxable amount will include the ordinary income portion and the amount eligible for the capital gain election.

(l) Deduct any amounts included in gross income under the provisions of section 86 of the Internal Revenue Code relating to certain social security and railroad benefits.

(m) In the case of a self-employed individual, deduct the actual cost of premiums paid to secure worker's compensation insurance for coverage in Idaho, if such cost has not been deducted in arriving at taxable income.

(n) In the case of an individual, deduct the amount contributed to a college savings program pursuant to chapter 54, title 33, Idaho Code, but not more than four thousand dollars (\$4,000) per tax year. If the contribution is made on or before April 15, 2001, it may be deducted for tax year 2000 and an individual can make another contribution and claim the deduction according to the limits provided in this subsection during 2001 for tax year 2001, as long as the contribution is made on or before December 31, 2001.

(o) In the case of an individual, add the amount of a nonqualified withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, less any amount of such nonqualified withdrawal included in the individual's federal gross income pursuant to section 529 of the Internal Revenue Code.

(p) In the case of an individual, add the amount of a withdrawal from an individual trust account or savings account established pursuant to chapter 54, title 33, Idaho Code, transferred to a qualified tuition program, as defined in section 529 of the Internal Revenue Code, that is operated by a state other than Idaho. The addition provided in this subsection is limited to the amount of the total contributions to the Idaho individual trust account or savings account by the account owner in the twelve (12) months preceding the date of the transfer.

(q) Deduct any amounts included in gross income from the sale or transfer of an Idaho commemorative medallion pursuant to section 67-1223, Idaho Code.

SECTION 4. That Section 63-3622PP, Idaho Code, be, and the same is hereby amended to read as follows:

63-3622PP. IDAHO COMMEMORATIVE ~~SILVER~~ MEDALLIONS. There is hereby exempted from the taxes imposed by this chapter the sale or purchase of Idaho commemorative ~~silver~~ medallions through the office of the treasurer of the state of Idaho or through agents designated by the state treasurer pursuant to the issuance of Idaho commemorative ~~silver~~ medallions authorized in section 67-1223, Idaho Code.

SECTION 5. That Section 67-1223, Idaho Code, be, and the same is hereby amended to read as follows:

67-1223. IDAHO COMMEMORATIVE ~~SILVER~~ MEDALLIONS ISSUED BY THE STATE TREASURER. (1) The state treasurer is hereby authorized to issue ~~a~~ multiple series of commemorative silver and gold medallions for sale to the public. A series shall be designated as either a veterans or a transportation series. Each The veterans series shall commemorate Idaho history, people or resources and may bear the great seal of the state of Idaho. The transportation series shall commemorate pioneering infrastructure and may bear the great seal of the state of Idaho. Silver m-Medallions shall contain one (1) ounce of fine silver, shall be alloyed to at least ninety percent (90%) fineness, and shall not constitute legal tender. Gold medallions may be either one-fourth (1/4) or one-half (1/2) ounce of fine gold and shall be at least fourteen (14) carat gold and contain at least fifty-eight and one-half percent (58.5%) gold and shall not constitute legal tender. No sales or use tax shall be imposed on the sale or purchase of medallions from the state treasurer or any agent designated by the state treasurer. Only mints which have contracted with the state treasurer may produce Idaho commemorative silver and gold medallions. Any other production of such medallions is a misdemeanor.

(2) The state treasurer shall make such arrangements as the state treasurer considers appropriate for the production, promotion, distribution and sale of silver and gold medallions, and shall ensure that all moneys received from the sale of silver and gold medallions are paid into the state treasury and credited to the state veterans cemetery maintenance fund created in section 65-107, Idaho Code. The state treasurer shall make such arrangements as the state treasurer considers appropriate for the production, promotion, distribution and sale of transportation gold and silver commemorative medallions, and shall ensure that all moneys received from the sale of transportation silver and gold commemorative medallions

are paid into the state treasury and credited to the state highway account created in section 40-702, Idaho Code. The state treasurer may promulgate administrative rules in compliance with chapter 52, title 67, Idaho Code, to implement the provisions of this section. Provided however, the state treasurer is hereby authorized to retain such amounts from the sale of medallions as necessary to repay costs incurred by the state treasurer in the promotion, shipping and handling of medallions. Provided further, if the initial cost to mint a series of medallions is provided by moneys from another state fund, then such other fund shall first be reimbursed for such costs before the remaining revenues are credited to the state veterans cemetery maintenance fund or to the state highway account. The revenues shall be used for the purposes designated in section 65-107, Idaho Code, for silver medallions and section 40-702, Idaho Code, for transportation silver and gold medallions.

(3) The state treasurer, in collaboration with a committee of legislators comprised of representatives appointed by the speaker of the house of representatives and senators appointed by the president pro tempore of the senate, shall determine the number of medallions to be issued in a series, shall determine the number of series to be issued, and shall approve the design of medallions for each series.

(4) The state treasurer, as agent of the state of Idaho, is hereby directed to obtain a federal trademark on the design of each series of medallions issued, and is further authorized, after consultation with the attorney general, to register for a state trademark under chapter 5, title 48, Idaho Code. The design of each series of Idaho commemorative ~~silver~~ medallions is the property of the state of Idaho, and the state of Idaho and the taxpayers shall be deemed to have a trademark on each design. It is the duty of the state treasurer to protect each and every trademark.

(a) If a person reproduces a trademark medallion design and distributes any product using any such design for the purpose of direct or indirect commercial advantage, the person shall owe to the state treasurer, as the agent of the state of Idaho, a royalty fee in addition to the revenues derived from the sale of products using a medallion design. Any person who reproduces a trademark design and distributes any product with a medallion design in violation of the provisions of this subsection (4), shall be deemed to be an infringer of the state of Idaho's trademark. The state treasurer, through the office of the attorney general, is entitled to institute an action for any infringement of that particular right committed while the state treasurer or his designated agent has custody of the trademark.

(b) A court having jurisdiction of a civil action arising under this subsection (4) may grant such relief as it deems appropriate. At any time while an action under this subsection (4) is pending, the court may order the impounding, on such terms as it deems reasonable, of all products in inventory of the infringer which are in violation of law.

(c) An infringer on the state of Idaho's trademark pursuant to this subsection (4) is liable for any profits the infringer has incurred reproducing a trademark design and distributing products using the design for commercial purposes or is liable for statutory damages as provided in paragraph (d) of this subsection (4).

(d) The state treasurer, as agent of the trademark owner, may elect, at any time before final judgment is rendered, to recover, instead of actual damages and profits, an award of statutory damages for all infringements involved in the action, with respect to a trademark medallion design for which any one (1) infringer is liable individually, or for which any two (2) or more infringers are liable jointly and severally, in a sum of not less than two

1 hundred fifty dollars (\$250) or more than ten thousand dollars (\$10,000), as the court
2 considers just.

3 (e) In any civil action under this subsection (4), the court may allow the recovery of
4 full costs by or against any party and may also award reasonable attorney's fees to the
5 prevailing party as part of the costs.

6 (5) The veterans silver mMedallions in the first series issued shall commemorate
7 "Support of Idaho's Heroes" to honor the courage and sacrifice of all Idaho servicemen and
8 veterans of the United States armed forces and Idaho military branches of the armed services
9 and shall be used to provide funding for Idaho servicemen and veterans cemeteries throughout
10 the state. The transportation Idaho commemorative medallions shall be called "Transportation
11 Medallions" and shall be used to provide funding for highway projects and other transportation
12 needs throughout the state.

13 SECTION 6. An emergency existing therefor, which emergency is hereby declared to
14 exist, Sections 1, 2, 4 and 5 of this act shall be in full force and effect on and after passage
15 and approval and Section 3 of this act shall be in full force and effect on, and retroactively to,
16 January 1, 2009.